IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1256 OF 1996.

Shukracharya Narayanrao Sabale ...Appellant

Vs.

Smt.Ratnabai Bapu Chalke & ors. ...Respondents

Mr. Ramesh Karale i/b Mr.P.K.Dhakephalkar for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 7,2006.

ORAL JUDGMENT:

1. This Appeal is preferred by the original Opponent No.2 taking exception to the Judgment and Award dated 28th April 1994 passed by the learned Member of the Motor Accident Claim Tribunal by which the claim filed by the Respondent Nos.1 to 3 was partly allowed and the Appellant, the Respondent No.4 and the Respondent No.6 herein were directed to pay compensation of Rs.64,000/- with interest thereon at the 12% p.a. from the date of claim petition till the realization.

2. On 14th June 1991 the deceased Bapu Chalke was returning to Kini on his bicycle. when he was about to enter Pune-Banglore Road, a truck owned by the Appellant driven by the Respondent No.4 suddenly came from the rear side and gave a dash to the bicycle. As a result, Bapu fell down from the bicycle and sustained injuries and he became unconscious. On 16th July 1981 he succumbed to the injuries sustained by him. Separate written statements were filed by the Appellant and

the Respondent No.4. A contention was raised that the Respondent No.4 was driving the truck in a normal speed at that time while taking a 'C' turn. The case is that at that time the deceased came from west side of the road and dashed to the right side of the truck. It is contended that the deceased Bapu was negligent in crossing Highway and the truck was on the correct side of the road.

3. The learned Advocate for the Appellant invited my attention to the notes of evidence and submitted that the deposition of the Driver clearly shows that the entire negligence was on the part of deceased Bapu. He submitted that the evidence on record shows that while the truck was taking a 'C' turn in a normal speed, it was the deceased who came from the wrong side and dashed against the truck. He, therefore, submitted that there was no negligence on the part of the Driver appointed him and therefore no compensation is payable by the Appellant.

4. I have considered the submissions. The spot panchnama has been duly proved and has been admitted in evidence. The spot panchnama shows that the bicycle was dragged after the impact to the extent of 14 feet in length. The place where the truck was found on the road after the accident does not support the case made out by the Appellant. It appears from the panchnama that at the time of accident the truck was not its correct side. If the case made out by the driver of the

truck is accepted, it is difficult to explain as to how the bicycle was dragged to the a distance of 14 feet. Considering the evidence on record the Tribunal has invoked the doctrine of res ipsa loquitur. It is very difficult to find fault with the approach of the Tribunal.

5. It is pertinent to note that the impugned Judgment and Award has not been challenged by the Insurance Company which is held to be liable to pay compensation jointly and severally along with the present Appellant.

6. There is no merit in the Appeal and the same is dismissed with no order as to costs.

Judge.